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Fima Bulking Services Bhd & Ors v Kazhou Pte Ltd (Lembaga Minyak Sawit Malaysia, proposed intervener)

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-37WS-96–09 OF 2024
ARZIAH MOHAMED APANDI JC
4 JULY 2025

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Civil Procedure — Intervention — Application to intervene — Whether third party could not be allowed to intervene in execution proceedings and obtain stay of execution — Whether allowing such application not only prejudiced judgment creditor's right and legitimate expectation to enforce/execute its judgment but was also procedurally improper as such proceedings were not the right forum for new parties to be added

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The plaintiffs had obtained default judgment against the defendant ('Kazhou') in High Court Suit 242 for payment of outstanding storage charges in respect of used cooking oil ('UCO') that were kept in the plaintiffs' tanks pending export. One month after the judgment was obtained the proposed intervener ('MPOB') seized the UCO as evidence for the purpose of taking criminal action against Kazhou for not having a licence to export the oil. Pending the criminal trial, MPOB, purportedly acting pursuant to s 53 of the Malaysian Palm Oil Board Act 1998, issued letters of offer to four successful bidders who were keen to buy the UCO. However, MPOB's decision to sell the UCO was quashed by the High Court on a judicial review application because of procedural irregularities. The plaintiffs subsequently notified MPOB that they would be executing the judgment to recover mounting storage costs. MPOB did not object until one day prior to the execution, when it applied for leave of court to intervene in the execution proceedings and to stay the execution on the ground that the UCO should be preserved as evidence for its criminal proceedings against Kazhou. The Court Sheriff called off the execution pending further directions from Court. When MPOB's intervener-cum-stay application came up for hearing, the senior assistant registrar ('SAR') dismissed it on the ground that it was not only procedurally irregular but lacked merit. In the instant appeal by MPOB to set aside the SAR's decision, the plaintiffs argued that: (a) it was procedurally wrong for MPOB to intervene in the execution proceedings and seek to stay it; (b) instead of intervention, MPOB should have invoked the interpleader procedure under O 17 of the Rules of Court 2012 if it had any claim to the seized UCO; and (c) MPOB's ground that the UCO should be preserved as evidence contradicted its previous attempt to sell the seized oil by way of a tender exercise.

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Held, dismissing the appeal and affirming the SAR's decision:

(1) Execution proceedings were meant to enforce a judgment that had already been issued. Such proceedings did not have the substantive jurisdiction to consider an application for intervention or joinder of parties. Only the court that had decided the main suit in which the judgment was obtained had the authority to add parties as co-defendants under O 15 r 6 of the Rules of Court 2012 ('the ROC'). Execution proceedings could not create new causes of action or permit the re-litigation of substantive rights that had already been determined in the underlying judgment (see paras 10 & 17).

(2) The test to determine whether a party should be allowed to intervene was whether its legal interests (i.e. rights against or liabilities to any other party to the action in respect of the subject matter of the action) would be directly affected by any order or judgment which might be made in the action. Commercial interests alone were insufficient to allow intervention. The first limb of O 15 r 6(2) of the ROC also required a proposed intervener to show that its presence was necessary to ensure the effective and complete disposal of the matters in dispute. In this case, MPOB could only show that it had commercial interests, and no other interests, in the execution proceedings. This was insufficient as a ground for intervention (see paras 13 & 15–16).

(3) MPOB's reliance on O 47 r 1 of the ROC to support its stay application was a fundamental procedural error that could not be cured. Order 47 required the stay application to be filed before the court that had granted the judgment or order sought to be stayed. Hence, the application should have been made in Suit 242 and not in the execution proceedings. This non-compliance alone was sufficient for MPOB's appeal to be dismissed (see paras 18 & 20).

(4) Where parties claimed interests in the property that was subject to execution, the proper remedy was to file interpleader proceedings under O 17 of the ROC and not an application to intervene. MPOB's subsequent filing of an interpleader summons in encl 56 showed that it was vacillating and contradictory in its position (see paras 21–22).

(5) The law was well-settled that intervener applications post-judgment would not be entertained as it would undermine finality in judicial decisions as well as the doctrine of res judicata. It would also cause enforcement proceedings to be scuttled by tactical delays (see paras 23–24).

(6) The mere existence of MPOB's criminal proceedings against Kazhou did not ipso facto constitute special circumstances to warrant a stay of execution. MPOB had failed to demonstrate how the execution would

specifically prejudice the criminal proceedings and why alternative measures could not adequately protect any legitimate interests (see para 27).

(7) MPOB's contention that the seized UCO must be preserved for its criminal proceedings against Kazhou contradicted its earlier attempt to sell the oil under s 53 of the MPOB Act 1998 on the ground that the oil was perishable and incurred high storage costs. The fact that MOPB had taken samples from all the UCO exhibits showed that the bulk quantities were no longer required for evidential purposes. This sampling approach was standard practice in criminal proceedings involving large amounts of exhibits, making the retention of the entire volume unnecessary (see paras 29–30).

(8) MPOB's stay application also failed for the reason that there was non-compliance with the time period for service of same on the plaintiffs under O 47 r 14 of the ROC and also for the reason that MPOB never explained the reason for its delay in making its application. The delay contradicted the supposed urgency in preserving the UCO for the criminal proceedings (see paras 32–35).

(9) MPOB's conduct in filing multiple stay applications whilst simultaneously pursuing an appeal was an abuse of process and wasted judicial resources. Its conduct had substantially prejudiced the plaintiffs who were saddled with the accumulated storage costs of the UCO, the inability to use the tanks for commercial operations, costs of the aborted execution, and liability for environmental damage from tank corrosion and UCO leakage. All this prejudice was directly attributable to MPOB's contradictory and delayed conduct (see paras 37–39).

[Bahasa Malaysia summary

Plaintif-plaintif telah memperoleh penghakiman ingkar terhadap defendan ('Kazhou') dalam Guaman Mahkamah Tinggi 242 bagi bayaran penyimpanan tertunggak minyak masak terpakai ('MMT') yang disimpan di dalam tangki milik plaintif sementara menunggu eksport. Sebulan selepas penghakiman tersebut diperoleh, pencelah yang dicadangkan ('MPOB') telah menyita MMT tersebut sebagai bahan bukti bagi tujuan mengambil tindakan jenayah terhadap Kazhou kerana tidak mempunyai lesen untuk mengeksport minyak berkenaan. Sementara menunggu perbicaraan jenayah, MPOB, yang didakwa bertindak menurut s 53 Akta Lembaga Minyak Sawit Malaysia 1998, telah mengeluarkan surat tawaran kepada empat pembida berjaya yang berminat untuk membeli MMT tersebut. Walau bagaimanapun, keputusan MPOB untuk menjual MMT tersebut telah dibatalkan oleh Mahkamah Tinggi melalui suatu permohonan semakan kehakiman atas alasan kesalahan prosedur. Selepas itu, plaintif-plaintif telah memaklumkan MPOB bahawa mereka akan melaksanakan penghakiman tersebut bagi mendapatkan semula

kos penyimpanan yang semakin meningkat. MPOB tidak mengemukakan sebarang bantahan sehingga sehari sebelum pelaksanaan, apabila MPOB memohon kebenaran mahkamah untuk mencelah dalam prosiding pelaksanaan dan untuk menangguhkan pelaksanaan tersebut atas alasan bahawa MMT berkenaan perlu dipelihara sebagai bahan bukti bagi prosiding jenayahnya terhadap Kazhou. Sheriff Mahkamah telah menangguhkan pelaksanaan tersebut sementara menunggu arahan selanjutnya daripada Mahkamah. Apabila permohonan pencelah serta penangguhan oleh MPOB didengar, Penolong Kanan Pendaftar ('PKP') telah menolaknya atas alasan bahawa permohonan tersebut bukan sahaja tidak teratur dari segi prosedur malah tidak bermerit. Dalam rayuan ini oleh MPOB untuk mengenepikan keputusan PKP tersebut, plaintif-plaintif berhujah bahawa: (a) adalah salah dari segi prosedur bagi MPOB untuk mencelah dalam prosiding pelaksanaan dan memohon penangguhan pelaksanaan; (b) selain mencelah, MPOB sepatutnya telah menggunakan prosedur interplider di bawah A 17 Kaedah-Kaedah Mahkamah 2012 sekiranya MPOB mempunyai sebarang tuntutan terhadap MMT yang disita tersebut; dan (c) alasan MPOB bahawa MMT tersebut perlu dipelihara sebagai bahan bukti bercanggah dengan cubaan terdahulunya untuk menjual minyak yang disita itu melalui suatu proses tender.

Diputuskan, menolak rayuan dan mengekalkan keputusan PKP:

(1) Prosiding pelaksanaan bertujuan untuk menguatkuasakan suatu penghakiman yang telah pun dikeluarkan. Prosiding sedemikian tidak mempunyai bidang kuasa substantif untuk mempertimbangkan permohonan mencelah atau mencantumkan pihak-pihak. Hanya Mahkamah yang telah memutuskan guaman utama di mana penghakiman tersebut diperoleh mempunyai kuasa untuk menambah pihak sebagai defendan bersama di bawah A 15 k 6 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Prosiding pelaksanaan tidak boleh mewujudkan kausa tindakan baharu atau membenarkan litigasi semula hak-hak substantif yang telah diputuskan dalam penghakiman asal tersebut (lihat perenggan 10 & 17).

(2) Ujian untuk menentukan sama ada sesuatu pihak patut dibenarkan mencelah adalah sama ada kepentingan undang-undangnya (iaitu hak atau liabiliti kepada mana-mana pihak lain dalam tindakan mengenai perkara asas tindakan tersebut) akan terjejas secara langsung oleh sebarang perintah atau penghakiman yang mungkin dibuat dalam tindakan itu. Kepentingan komersial semata-mata adalah tidak mencukupi untuk membenarkan celahan. Bahagian pertama A 15 k 6(2) KKM 2012 juga menghendaki pencelah yang dicadangkan menunjukkan bahawa kehadirannya adalah perlu bagi memastikan pelupusan yang berkesan dan lengkap terhadap perkara-perkara yang dipertikaikan. Dalam kes ini, MPOB hanya dapat menunjukkan bahawa

mereka mempunyai kepentingan komersial, dan tiada kepentingan lain, dalam prosiding pelaksanaan tersebut. Hal ini adalah tidak mencukupi sebagai alasan untuk membenarkan untuk mencelah (lihat perenggan 13 & 15–16).

(3) Kebergantungan MPOB kepada A 47 k 1 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') bagi menyokong permohonan penangguhannya merupakan suatu kesilapan prosedur yang asas dan tidak boleh diperbaiki. Aturan 47 mensyaratkan bahawa permohonan penangguhan hendaklah difailkan di hadapan mahkamah yang telah mengeluarkan penghakiman atau perintah yang dipohon untuk ditangguhkan. Oleh yang demikian, permohonan tersebut sepatutnya dibuat dalam Guaman 242 dan bukannya dalam prosiding pelaksanaan. Ketidakpatuhan ini sahaja sudah mencukupi untuk menyebabkan rayuan MPOB ditolak (lihat perenggan 18 & 20).

(4) Dalam keadaan di mana pihak-pihak mendakwa mempunyai kepentingan terhadap harta yang tertakluk kepada pelaksanaan, remedi yang wajar adalah dengan memfailkan prosiding interplider di bawah A 17 KKM 2012 dan bukannya permohonan untuk mencelah. Pemfailan seterusnya oleh MPOB terhadap saman interplider dalam lamp 56 menunjukkan bahawa pendiriannya adalah tidak konsisten dan bercanggah (lihat perenggan 21–22).

(5) Undang-undang mantap menyatakan bahawa permohonan pencelah yang dibuat selepas penghakiman tidak akan dilayan kerana ianya akan menjejaskan prinsip muktamad keputusan kehakiman serta doktrin res judicata. Ianya juga berpotensi menggagalkan prosiding penguatkuasaan melalui kelewatan secara taktikal (lihat perenggan 23–24).

(6) Kewujudan prosiding jenayah semata-mata oleh MPOB terhadap Kazhou tidak dengan sendirinya membentuk keadaan khas yang mewajarkan penangguhan pelaksanaan. MPOB telah gagal menunjukkan bagaimana pelaksanaan tersebut akan menjejaskan prosiding jenayah berkenaan secara khusus dan mengapa langkah-langkah alternatif tidak dapat melindungi secara memadai sebarang kepentingan sah (lihat perenggan 27).

(7) Hujahan MPOB bahawa MMT yang disita perlu dipelihara bagi tujuan prosiding jenayahnya terhadap Kazhou adalah bercanggah dengan percubaan terdahulunya untuk menjual minyak tersebut di bawah s 53 Akta MPOB 1998 atas alasan bahawa minyak itu mudah rosak dan menanggung kos penyimpanan yang tinggi. Fakta bahawa MPOB telah mengambil sampel daripada semua eksibit MMT menunjukkan bahawa kuantiti pukal tersebut tidak lagi diperlukan bagi tujuan pembuktian. Pendekatan pengambilan sampel ini merupakan amalan standard dalam prosiding jenayah yang melibatkan kuantiti eksibit yang besar, sekali gus

menjadikan penyimpanan keseluruhan jumlah tersebut adalah tidak perlu (lihat perenggan 29–30).

(8) Permohonan penangguhan MPOB juga gagal atas alasan ketidakpatuhan terhadap tempoh masa penyampaian permohonan tersebut kepada plaintif-plaintif di bawah A 47 k 14 Kaedah-Kaedah Mahkamah 2012, serta kerana MPOB tidak pernah menjelaskan sebab kelewatan dalam memfailkan permohonannya. Kelewatan tersebut bercanggah dengan dakwaan keperluan mendesak untuk memelihara MMT bagi tujuan prosiding jenayah (lihat perenggan 32–35).

(9) Tindakan MPOB memfailkan pelbagai permohonan penangguhan pelaksanaan pada masa yang sama meneruskan rayuan merupakan suatu penyalahgunaan proses dan pembaziran sumber kehakiman. Tindakan tersebut telah menyebabkan prejudis yang ketara kepada plaintif-plaintif yang terpaksa menanggung kos penyimpanan MMT yang terkumpul, ketidakupayaan untuk menggunakan tangki-tangki tersebut bagi operasi komersial, kos pelaksanaan yang terbatal, serta liabiliti terhadap kerosakan alam sekitar akibat hakisan tangki dan kebocoran MMT. Kesemua prejudis ini adalah secara langsung berpunca daripada tindakan MPOB yang bercanggah dan lewat (lihat perenggan 37–39).]

Cases referred to

Bakti Dinamik Sdn Bhd v Bauer (M) Sdn Bhd [2016] MLJU 1878; [2016] 10 CLJ 247, HC (folld)

Bangkok Bank Limited v Wiel Brothers Cotton Inc [1977] 2 MLJ 134, FC (refd)

Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors [2011] 1 MLJ 721, FC (refd)

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622, FC (refd)

Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2003] 4 CLJ 124, FC (refd)

Kumarasamy Pillai Govindaraju @ K Govindaraju a/l Kumarasamy Pillai & Ors v Vijayasundaram a/l Sambantham Mudaliar & Anor (Vegadachalam a/l Palaniappen, intervener) [2010] 4 MLJ 567, HC (refd)

Lam Hong Hardware Co Sdn Bhd v Incacon Sdn Bhd & Ors(Eon Bank Bhd, intervener) [2006] 4 MLJ 531, CA (refd)

Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd [2002] 3 MLJ 49; [2002] 3 CLJ 380, CA (refd)

Nazlin Shah Randolph bt Mohd Fauzi v SA Puncak Management Sdn Bhd [2024] MLJU 1093; [2024] CLJU 994, HC (folld)

Ng Hee Thong & Anor v Public Bank Bhd [2000] 2 MLJ 29; [1995] 1 CLJ 609, CA (refd)

Overseas Aviation Engineering (GB) Ltd, Re [1963] Ch 24, CA (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (refd)

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd

& Anor [2011] 4 MLJ 403, CA (refd)
Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener) [1995] 2 MLJ 421, HC (folld)
Tenaga Nasional Bhd v Irham Niaga Sdn Bhd & Anor [2011] 1 MLJ 752, CA (refd)
The Official Assignee of the property of Lim Chiak Kim, A Bankrupt v United Overseas Bank Ltd [1988] 3 MLJ 189, CA (refd)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63, SC (refd)
Univein Sdn Bhd v Malaysia Building Society Bhd [2003] 4 MLJ 618, CA (refd)

Legislation referred to

Land Acquisition Act 1960 Form N
Malaysian Palm Oil Board Act 1998 s 53
Rules of Court 2012 O 15 rr 6, 6(2), (2)(b)(i), (2)(b)(ii), O 17, O 17 rr 1, 2, O 47, O 47 r 1, 1(4), O 92 r 4

Lee Wei Ting (Loh Ivan & Lee Hui) for the plaintiff.
Najib Zakaria (Najib Hisham Isa) for the intervener.

Arziah Mohamed Apandi JC:

INTRODUCTION

[1] This encl 29 is the appeal made by the proposed intervener ('PI') to the judge in chambers on the earlier decision made by the senior assistant registrar ('SAR') on 10 January 2025 of encl 8 that is the order dismissing the PI's application for leave to intervene in the execution proceedings ('AE 96') and also for a stay of the AE 96.

[2] A perusal of encl 8 shows that the PI sought to intervene in the AE 96 and not the civil suit itself ('suit 242'). Suit 242 concluded on 23 July 2024 when the judgment creditor ('JC') obtained judgment in default ('JID') against the defendant, Kazhou Pte Ltd.

BACKGROUND FACTS LEADING TO THE APPEAL

The original storage agreement and seizure (in 2020)

[3] On 15 April 2020, Kazhou Pte Ltd (judgment debtor)('JD') entered into an agreement with three companies ('JC') for the storage and handling of used cooking oil ('UCO') prior to export. However, on 26 May 2020, the Malaysian Palm Oil Board ('MPOB')('PI') seized the UCO at JC's premises, alleging that no proper export licence had been obtained. The UCO remained stored in JC's tanks, but JC received no payment for ongoing storage costs, resulting in an increasing financial burden.

MPOB's contradictory conduct on UCO disposal

[4] While seizing the UCO for criminal proceedings, MPOB ('PI') simultaneously pursued its own sale of the oil. MPOB ('PI') carried out a tender under s 53 of the MPOB Act 1998 ('the MPOBA 1998') and issued letters of offer to four successful bidders on 23 December 2021. When this sale was challenged through judicial review, the Penang High Court quashed MPOB's decision on 16 June 2023 due to procedural irregularities. MPOB ('PI') then appealed this decision ('Appeal 363'), which was ultimately dismissed by the Court of Appeal on 27 March 2025. This conduct directly contradicted any claim that the UCO was crucial evidence requiring preservation.

The storage cost recovery litigation (in 2024)

[5] With mounting unpaid storage costs, the JC initiated suit 242 on 16 April 2024 against the JD for outstanding charges. The JC obtained the JID on 23 July 2024. Given the JD's non-compliance, the JC notified MPOB ('PI') on 9 August 2024 of its intention to execute the judgment via writ of seizure and sale ('WSS') against the UCO. The JC also highlighted serious concerns about tank corrosion causing oil leakage, creating environmental risks. MPOB ('PI') acknowledged this notification on 16 August 2024, requesting only to be informed of hearing dates for watching brief purposes, without raising any objections.

The last-minute intervention attempt

[6] Despite months of advance notice and opportunity to object, MPOB ('PI') remained silent until three days before the scheduled 24 October 2024 execution date, when its solicitors verbally indicated potential objections. On 23 October 2024, just one day before execution, MPOB filed encl 8 seeking leave to intervene as co-defendant and stay the WSS. MPOB's application was premised solely on the claim that the UCO required preservation as evidence for the ongoing Criminal Case PB-87–376–07 of 2020 in the Butterworth Magistrate's Court.

The execution day confrontation and aftermath

[7] On 24 October 2024, MPOB's representatives attended the execution venue and objected to the seizure, presenting criminal case documents to the sheriff. The sheriff suspended the execution pending further court directions. On 10 January 2025, the SAR dismissed MPOB's application with RM3,000 costs, finding the application irregular and lacking merit. MPOB filed this

appeal on 14 January 2025, while simultaneously submitting another stay application (encl 32) raising additional grounds not pursued in the original application.

Underlying legal and procedural issues

[8] The core dispute centres on whether MPOB ('PI')'s intervention application was procedurally proper, having been filed in the execution proceedings rather than the original civil court, and whether MPOB ('PI') established sufficient grounds for staying the execution. The JC contends that MPOB should have used the interpleader process under O 17 of the Rules of Court 2012 ('the ROC 2012') if claiming rights to the seized goods, and that MPOB's contradictory conduct in attempting to sell the same UCO undermines any claim about evidence preservation. The case involves parallel criminal proceedings, competing claims over the UCO's disposal, and significant ongoing storage costs accumulating against the JC.

GROUNDS FOR DISMISSING THE APPEAL

[9] Having considered the written submissions, affidavits, and authorities cited by the parties, I decide to dismiss the IP's appeal against the SAR's decision dated 10 January 2025 on the following grounds.

Fundamental jurisdictional defects

[10] An execution process like the AE 96 is a consequential step to enforce a judgment already issued. The execution proceedings are limited to carrying out court orders and do not have the substantive jurisdiction to consider applications for intervention or joinder of parties. The authority to add parties as co-defendants under O 15 r 6 of the ROC 2012 can only be exercised by the court handling the main proceedings, not the execution proceedings, which are solely concerned with enforcement procedures.

The test for intervention

[11] An analysis of the merits of intervening at this late stage of the execution proceedings would show PI's lack of merit in doing so.

[12] Order 15 r 6(2) of the ROC 2012 provides that the court may order the following persons to be added as a party to the proceedings:

(a) r 6(2)(b)(i): a person whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; and/or

(b) r 6(2)(b)(ii): where a question or an issue arising out of or relating to or

connected with the relief or remedy claimed exists between the proposed intervener and any party to the suit, where it would be just and convenient for the court to determine.

[13] The principles of intervention are well-settled where in determining whether a party may be added as an intervener, the test to be adopted is whether the proposed intervener's 'legal interests' ie his rights against or liabilities to any party to the action in respect of the subject matter of the action, would be directly affected by any order or judgment which might be made in the action. Commercial interests alone would be insufficient to allow intervention (see *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63 (SC)). The Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 (PC) held:

> It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his commercial interests alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v Choong Sam & Ors 1* at pp 5556. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are legal' or merely 'commercial' in the following words (at p 56):
>
> > A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?

[14] A direct legal interest must be established for sufficient interest to justify intervention. An indirect or commercial interest does not satisfy the requirement (see *Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors* [2011] 1 MLJ 721 (FC)). The intervener application must be made at the earliest possible opportunity (*Chong Fook Sin*); and the burden is on the PI to satisfy the court that the requirements set out in O 15 r 6(2) of the ROC 2012 have been met before intervention can be allowed (see: *Kumarasamy Pillai Govindaraju @ K Govindaraju a/l Kumarasamy Pillai & Ors v Vijayasundaram a/l Sambantham Mudaliar & Anor (Vegadachalam a/l Palaniappen, intervener)* [2010] 4 MLJ 567 (HC)).

[15] Under the first limb of O 15 r 6(2) of the ROC 2012, the PI must show that its presence is necessary to ensure the effective and complete disposal of matters in dispute (see: *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403 (CA)).

[16] Based on the documents presented, I find the PI only has commercial interests in AE 96 and no other interests. This is insufficient as a ground to intervene.

Nature and scope of execution proceedings

[17] As clarified by the Court of Appeal in *The Official Assignee of the property of Lim Chiak Kim, A Bankrupt v United Overseas Bank Ltd* [1988] 3 MLJ 189 (CA), execution means 'the process for enforcing or giving effect to the judgment of the court'. It is completed when the judgment creditor obtains satisfaction. Execution proceedings do not create new causes of action nor permit re-litigation of substantive rights determined in the underlying judgment. In *Re Overseas Aviation Engineering (GB) Ltd* [1963] Ch 24 (CA) emphasised that execution is simply 'the process of law for enforcement of a judgment creditor's right'.

Wrong forum for stay applications under O 47 of the ROC 2012

[18] O 47 r 1 of the ROC 2012 provides the mechanism for staying execution, but the application must be made to 'the court' that granted the judgment or order sought to be stayed. In the Malaysian Civil Procedure 2015, Vol 1 at p 631, it is expressly stated that such applications must be made to 'the civil court which is granting the judgment or order, namely Suit 242, and not in this execution proceeding'. The PI's reliance on O 47 r 1 of the ROC 2012 while filing in the execution proceeding constitutes a fundamental procedural error that cannot be cured.

Procedural defects

[19] The application encl 8 is similar to the *Sistem Lingkaran* case, where the PI applied to intervene at a later stage of the subsequent land reference cases at the High Court to defend the award of compensation made by the land administrator. The appellant there didn't file an objection in Form N. Both the High Court and Court of Appeal had dismissed their application to intervene.

[20] From the documents, it is clear that the PI didn't follow the required procedures in an execution proceeding. This noncompliance alone is sufficient to dismiss the appeal. Enclosure No 8 was filed in the wrong proceeding (execution and not in the original civil court), failed to comply with O 47 r 1(4) of the ROC 2012 timing requirements, and used the wrong procedural route. The PI should have filed under O 17 of the ROC 2012 under the interpleader application proceeding. These fundamental procedural irregularities are fatal and incurable.

[21] Where parties claim interests in the property subject to the execution, the proper remedy is interpleader proceedings under O 17 rr 1 and 2 of the ROC 2012, not intervention. The Federal Court in *Bangkok Bank Limited v Wiel Brothers Cotton Inc* [1977] 2 MLJ 134 (FC) specifically held that

applications for leave to intervene in execution proceedings are 'procedurally incorrect' and that the proper avenue is interpleader. This procedure allows third parties to assert claims without disrupting the enforcement process through the more appropriate mechanism designed for such disputes.

[22] It is noted that the PI had actually then filed the interpleader summons via encl 56. It appears the PI is making a concerted effort to recover any monetary gains it could obtain in AE 96. This effort demonstrates that the PI is vacillating and contradicting its positions.

Post-judgment intervention principles

[23] The law is well-settled that after the judgment has been entered, applications to intervene will not be entertained as the proceedings are no longer pending. In *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 (FC), the Federal Court held that intervention applications must be made while proceedings remain alive and before final determination. Similarly, in *Lam Hong Hardware Co Sdn Bhd v Incacon Sdn Bhd & Ors (Eon Bank Bhd, intervener)* [2006] 4 MLJ 531 (CA), the Court of Appeal confirmed that post-judgment intervention defeats the principle of finality in litigation.

[24] Allowing intervention after judgment would undermine the legal certainty and the doctrine of res judicata. It would permit endless re-litigation by parties who could have but failed to participate in the original proceedings. The courts have consistently refused to allow parties to intervene post-judgment to avoid creating a precedent that would destabilise the finality of judicial decisions and encourage tactical delays in enforcement.

Absence of special circumstances for stay

[25] The test for staying execution requires 'special circumstances' that are genuinely exceptional, not ordinary or usual. It must relate to the execution process itself rather than the merits of the judgment or any pending appeal. In *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 4 CLJ 124 (FC), the Federal Court emphasised that circumstances must be 'special, not ordinary, common or usual, and that go to the execution of the judgment and not to the validity or correctness of the judgment'.

[26] The successful litigants should not be deprived of the fruits of litigation unless clear special circumstances exist, which is fundamental to the administration of justice. As stated in *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380 (CA), courts must ensure

A that judgment creditors can enforce their judgments without unwarranted interference. The burden on applicants seeking to stay execution is reasonably high to protect the rights of successful litigants and maintain judicial fairness.

B **[27]** The mere existence of related criminal proceedings does not ipso facto constitute special circumstances warranting a stay. The PI must demonstrate how the execution would specifically prejudice the criminal proceedings and why alternative measures cannot adequately protect any legitimate interests. The PI has failed to establish this nexus, particularly given the contradictory conduct discussed below.

C

Approbation and reprobation

D **[28]** The Court of Appeal in *Tenaga Nasional Bhd v Irham Niaga Sdn Bhd & Anor* [2011] 1 MLJ 752 (CA) established that estoppel by election prevents parties from approbating and reprobating. Once a party makes an election with knowledge of their rights and acts upon it to their benefit, they cannot subsequently adopt an inconsistent position. The doctrine requires: (a) a clear choice between two courses of conduct, (b) knowledge of the facts giving rise to

E the choice, and (c) conduct demonstrating the election made.

MPOB's inconsistent elections

F **[29]** The ('MPOB') ('PI') conduct shows clear contradictions with its current stance. In December 2021, MPOB ('PI') issued letters of offer to sell the seized UCO under s 53 of the MPOBA 1998, citing that the UCO was perishable and incurred excessive custody costs. When the Penang High Court overturned this decision in June 2023, MPOB ('PI') appealed (Appeal No P-01(IM)-363–07 of 2023), clearly indicating its ongoing intention to

G dispose of the UCO. These actions are fundamentally at odds with the claim that the UCO must be preserved for criminal proceedings.

H **[30]** The MPOB ('PI')'s exhibit list dated 23 June 2023 reveals that samples have been taken from all UCO exhibits (P17-P27, P32-P42), indicating that the bulk quantities are no longer required for evidential purposes. This sampling approach is the standard practice in criminal proceedings involving large amounts of exhibits, making retention of the entire volume unnecessary and contradicting the MPOB ('PI')'s preservation argument.

I **[31]** The MPOB ('PI')'s filing of encl 32 seeking a stay specifically to prevent Appeal 363 from becoming academic further evidences the true motive, which is to secure the planned sale rather than preserve evidence for criminal

proceedings. This conduct confirms that the criminal case argument is pretextual and that the appellant's genuine interest lies in the commercial disposal of the UCO.

Procedural non-compliance:

[32] O 47 r 1(4) of the ROC 2012 mandates that stay applications and supporting affidavits must be served 'not less than four clear days before the return day'. The PI filed its application at 4:16pm on 23 October 2024 for an execution scheduled on 24 October 2024, providing less than 24 hours' notice, particularly to the JC. I concur with the decision in *Nazlin Shah Randolph bt Mohd Fauzi v SA Puncak Management Sdn Bhd* [2024] MLJU 1093; [2024] CLJU 994 (HC) where the High Court dismissed a stay application for similar non-compliance, emphasising that procedural requirements exist to ensure fairness and proper preparation.

[33] The last-minute filing, despite the PI's knowledge of the execution since August 2024, reveals a deliberate tactical delay rather than genuine urgency. The courts will not favour such conduct with substantive relief, as it undermines the orderly administration of justice and prejudices opposing parties who depend on procedural timelines.

Delay and unexplained conduct:

[34] In *Ng Hee Thong & Anor v Public Bank Bhd* [2000] 2 MLJ 29; [1995] 1 CLJ 609 (CA), it was emphasised that unexplained delays in asserting rights can undermine equitable claims. The PI waited nearly four months after the judgment was entered and over two months after being notified of execution intentions before taking action without providing a satisfactory explanation for this delay.

[35] If preserving the UCO for criminal proceedings was truly critical, the PI would have acted immediately upon discovering the execution intentions in August 2024. The delayed response contradicts the supposed urgency and significance of the criminal case considerations.

[36] The timing of various applications of encl 8 on the eve of execution, the immediate filing of this appeal alongside the concurrent filing of encl 32, demonstrates a deliberate pattern of tactical delays meant to hinder enforcement rather than address genuine substantive concerns.

Abuse of process and vexatious conduct:

[37] The PI's pursuit of multiple avenues, namely this appeal, encl 32 and Appeal 363, while raising substantially similar issues, constitutes an abuse of process. The courts will not permit parties to re-litigate matters through different procedural routes when the underlying issues have been determined or could have been determined in existing proceedings.

[38] I concur with the ruling in *Bakti Dinamik Sdn Bhd v Bauer (M) Sdn Bhd* [2016] MLJU 1878; [2016] 10 CLJ 247 (HC) where it prohibits the vexatious multiplication of proceedings on the same issues. The PI's conduct in filing multiple stay applications while simultaneously pursuing an appeal that would achieve the same commercial objective violates this principle and wastes judicial resources.

[39] It is evident that the PI's conduct has caused substantial prejudice to the JC with the: (a) accumulated storage costs since May 2020; (b) inability to use tanks for commercial operations; (c) costs of aborted execution; and (d) ongoing liability for environmental damage from tank corrosion and UCO leakage. This prejudice is directly attributable to the PI's contradictory and delayed conduct.

[40] Allowing post-judgment intervention would undermine the fundamental principle of finality in litigation. As emphasised in *Hong Leong Bank Bhd v Staghorn Sdn Bhd,* courts must maintain the integrity of the judicial process by ensuring that judgments, once entered, can be enforced without endless challenges from parties who failed to participate in the original proceedings.

[41] The legitimate expectations of successful litigants to enforce their judgments must be preserved. In *Univein Sdn Bhd v Malaysia Building Society Bhd* [2003] 4 MLJ 618 (CA), it highlighted that allowing enforcement reduces continuing interest accumulation and prevents further prejudice to judgment creditors. The courts should not permit tactics that indefinitely postpone satisfaction of valid judgments.

[42] The PI cannot invoke O 92 r 4 of the ROC 2012 to remedy the fundamental jurisdictional and procedural defects in its application. I agree with the decision in *Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener)* [1995] 2 MLJ 421 (HC), where the inherent jurisdiction 'was a procedural rule and was not intended to alter substantive rights' and 'must be applied to do justice to the parties and to secure fairness in a trial between them but not for any other purpose such as taking away the substantive rights'.

CONCLUSION

[43] The SAR correctly identified these fatal defects and properly dismissed the application. No error has been demonstrated in that decision, and this court will not interfere with the proper exercise of discretion by the SAR in refusing the application to intervene and stay the execution proceedings.

[44] The PI's conduct throughout these proceedings has been characterised by tactical delays, procedural non-compliance, and contradictory positions that have caused substantial prejudice to JC. As a result, the appeal is hereby dismissed with costs.

Appeal dismissed and SAR's decision affirmed.

Reported by Ashok Kumar